Be Prepared

A Guide to Preparing for Arbitration

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--- Purpose of this Document ---

This publication provides an overview of the arbitration process, from the filing of the initial application to the means of enforcement of an order. This document also intends to provide parties with a guideline to preparing for arbitration, focusing on preparing for the hearing by way of gathering the evidence and presenting that evidence to the arbitrator.

Readers should refer to:

- the Arbitration Rules of Procedure established by the Director of the Residential Tenancy Office, and
- a Guide for Landlords and Tenants in British Columbia, for more information on the *Residential Tenancy Act*, or
- a Guide for Manufactured Home Park Landlords and Tenants in British Columbia, for more information on the *Manufactured Home Park Tenancy Act*.

This publication is presented for information purposes only and is not a substitute for legal advice or an interpretation of provincial tenancy legislation. Rather, much of the material is adapted from the legislation and related case law, and condensed for ease of reading. This information is subject to change at any time by means of a change to the rules, regulations, statutes or the case law. Where the booklet conflicts with the *Residential Tenancy Act*, *Manufactured Home Park Tenancy Act*, or any other document having statutory authority, that document must prevail.

Where "the legislation" is referred in this document, it means the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*.

Steps in the Arbitration Process

Generally, the steps in the arbitration process are as follows:

Events giving rise to the claim

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Obtaining information to pursue the claim

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Filing the Application for Arbitration

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Serving arbitration documents

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Exchanging all evidence for the hearing

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Preparing for the hearing

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Attending the Hearing

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Receiving the decision or order

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Enforcing the Order

--- Purpose of the Rules --- of Procedure

An arbitration hearing is to enable an arbitrator to hear the tenant and landlord explain their separate versions of a dispute, to receive the evidence presented by each party, and to make an impartial and binding decision to resolve the dispute. The way the hearing is conducted is controlled by the arbitrator, subject to the Arbitration Rules of Procedure established by the Director under the authority of the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*.

The objective of the Arbitration Rules of Procedure is to secure a consistent, efficient and just process for resolving disputes.

The information contained in this booklet is intended to reflect the Rules. However, if information in the booklet conflicts with the Rules, the Rules prevail.

The Arbitration Rules of Procedure are available on the Residential Tenancy Office website.

--- What is Arbitration? ---

There are many ways for a landlord and tenant to resolve residential rental disputes. Sometimes problems arise when parties fail to communicate their needs and expectations, and can be worked out by simply talking to each other. Other times, and with consent, an Information Officer from the Residential Tenancy Office can assist parties with resolving their dispute by providing information on the rights and obligations of tenants and landlords according to the Legislation. It is best if landlords and tenants attempt to resolve disputes by reaching an agreement between themselves. However, if these attempts fail, either party can seek formal means of resolving their dispute.

Arbitration is the formal method of resolving disputes between landlords and tenants. An arbitrator, who is an independent and impartial decision maker, will hear both sides of the dispute and make a binding decision which the landlord and tenant must follow. Arbitrators are like judges and base their decisions on evidence and arguments presented by both parties at the arbitration hearing, and the provisions of the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act*, as applicable, and other laws. As arbitration is intended to be a process to discover the facts and be 'user friendly', arbitrators might take a proactive role in asking questions designed to determine the facts of the situation.

The Director of the Residential Tenancy Office assigns arbitrators province-wide to hear disputes while Residential Tenancy Office staff assist clients with information and scheduling of arbitration hearings. Depending on the location, hearings may be held in person or over the telephone.

The legislation sets out the law as it applies to residential and manufactured home park situations and the types of disputes which can come before an arbitrator. The Supreme and Provincial Courts recognize the jurisdiction of arbitrators to make decisions in residential and manufactured home park disputes.

--- Application for --- Arbitration

To apply for arbitration, the applicant must complete an Application for Arbitration, available at Residential Tenancy and Government Agent offices.

The Application for Arbitration serves several purposes. The application:

- correctly names the person or persons against whom the claim is being made;
- provides a legal address for service, and;
- ensures that the arbitrator and the respondent are aware of who is making the claim, and are provided with sufficient details of the claim to enable the matter to be properly heard and considered.

An arbitrator can't consider or take evidence on matters that aren't included in the application, except in very limited circumstances *(see Related Matters)*. The Application can also be used as a tool to focus both parties on the evidence required to support their position.

Completing the application for arbitration

Information Officers can assist you through the arbitration application process and will ensure that the form is complete in its entirety.
Be sure to follow the instructions on the form. It is very important to provide the correct legal names of the applicant (party initiating the dispute who has applied for arbitration), and the respondent (party who is responding to the application for arbitration), and full details of the matters in dispute. It is also important to provide adequate information to identify each issue disputed and list all of the remedies within

the legislation under which a decision is being requested. Remember that the arbitrator can only rule on the disputes listed on the application. Each issue must be summarized on the application. If necessary, an attached sheet may be used to provide more detail. While it may be possible to combine related matters on one application, if there is more than one issue to be arbitrated, more than one application may be required to deal with those disputes.
The codes indicating the type(s) of dispute on which the application is based must appear on the application. The codes, together with a description of the types of remedy available under each, appear on the back of the Application for Arbitration. The staff at the Residential Tenancy Office can assist the applicant in identifying which codes are appropriate. If claims are listed on the application which are not related and are, in effect, multiple disputes, the arbitrator may decline to hear the additional claims unless another application is filed to arbitrate those unrelated claims.

Applicants seeking a monetary order must specify each item claimed, indicate an amount for each

Example:	
Carpet cleaning	*$ 80.00*
Repair and patch nail holes	*$ 60.00*
Shower curtain/missing hooks	*$ 35.00*
2 garage door openers	*$150.00*
Total Claim	*$325.00*

item, and specify the total amount claimed. The purpose is to tell the other parties and the arbitrator about your claim.

Example: Mary, a landlord, has filed an application for a monetary order for damages allegedly caused by her former tenant. At the hearing, Mary

brings several receipts and estimates for items damaged which are not listed on the original application. The arbitrator refuses to allow Mary to include those additional claims as the tenant has not been made aware those claims would be made.

The application for arbitration may include a request that the respondent be ordered to reimburse the filing fee, which the arbitrator may grant, in whole or in part if the applicant is successful. (If the applicant's fee is waived, and the applicant is successful, the arbitrator may order the respondent to reimburse the Director of the Residential Tenancy Office for the fee, in whole or in part.)

The Application can also be used as a tool to focus both parties on the evidence required to support their position.

Filing the application

The applicant must then file the application and pay the required fee at the nearest Residential Tenancy Office or Government Agent Office. The filing fee will not be refunded in the event of cancellation or if the application is dismissed, with or without leave to re-apply. In cases of financial hardship, the Director may waive the required fee. An application to the Director to waive the fee may be made at the time of filing the application for arbitration. Proof of income will be required.

Joining applications

Any person may apply to the Director to join two or more arbitrations where the matters to be determined are related and it is reasonable for them to be heard jointly. In this event, a reduced

filing fee may be accepted for each additional application. An application to the Director to join arbitrations should be made at the time of filing the application. In exceptional circumstances, special arrangements may be made to allow late applications to be joined.

Example: Ellen is the owner of a manufactured home which sits on a site she rents from the landlord in a manufactured home park. She wishes to file an application for arbitration and expects that several other residents in the park in similar circumstances will also file applications. Ellen can obtain the consent of the other residents to have their applications joined with hers and heard at the same time to save time and expense. The Director may decide it is appropriate that only Ellen pay the full fee, and the other residents each pay a reduced fee for their applications. Ellen is known as the "lead applicant" and her file is referred to as the "parent file".

Where parties' applications are joined, the Residential Tenancy Office will communicate with the parties through the lead applicant. It is the lead applicant's responsibility to share information with the other applicants.

Jurisdiction

An arbitrator only has jurisdiction over disputes arising from a residential or manufactured home park tenancy. If the relationship between the parties is not a residential tenancy as defined in the *Residential Tenancy Act* or a manufactured home park tenancy as defined in the *Manufactured Home Park Tenancy Act*, the arbitrator will not be able to hear the application.

Arbitrator's only have jurisdiction on monetary claims to the monetary limit in Small Claims Court, currently $10,000. A claim that is for more than $10,000 must be pursued in the Supreme Court of British Columbia. Applicants with a claim amounting to more than $10,000 may abandon part of the claim so the total claimed will come within the limit that may be heard by an arbitrator. Applicants are not permitted to divide a claim that exceeds $10,000 into a number of smaller claims.

Amending the application

Once filed, an application can be amended in three ways:

1. If the application has not been served on any of the respondents and the hearing has not been held, the applicant should return to the Residential Tenancy Office to amend all copies at the same time.
2. If the application has been served, the applicant may be permitted to file a revised application with the Residential Tenancy Office. A copy of the revised application must be served on each respondent.
3. At the hearing, the applicant may request that the application be amended. The consent of the arbitrator will be required.

An application to add a further claim at the hearing will require the consent of the arbitrator and the respondent. If no amendment is requested or consent is not granted, the applicant may be able to file an additional application to pursue the matter. Additional information is available in the Arbitration Rules of Procedure.

Re-application

Parties granted leave to re-apply, and who wish to schedule another arbitration hearing, must complete and submit a new application form to the Office, pay a new filing fee, if required, and re-serve the arbitration documents. If you are granted leave to re-apply, any limitation period set out in the legislation is not extended.

Example: Henry is a landlord whose tenant moved out without paying the last month's rent. Henry filed an application for a monetary order but was unable to serve the arbitration documents as he was unable to find his former tenant. At the hearing, Henry was unable to prove service and the application was dismissed with leave to re-apply. Henry subsequently located the former tenant. Henry must file another application for arbitration, pay a new fee, and serve the arbitration documents on the former tenant.

Checklist

Prior to visiting the Residential Tenancy Office or Government Agent to file your application, the following checklist may be of assistance to ensure you have all the information you need:

- ❑ *The full name(s) of all the respondents*
- ❑ *The full address(es) of the respondents with postal codes*
- ❑ *The address of the premises in dispute*
- ❑ *The respondents' telephone number, especially important if the respondents reside in another location*
- ❑ *A concise summary of your claim, including details, that you will write on the application form*
- ❑ *If a monetary claim, the amount you are claiming*
- ❑ *All receipts, invoices, and estimates to support your monetary claim*
- ❑ *A copy of any relevant Notice, if requesting an order of possession or an order setting aside the notice*
- ❑ *A copy of the tenancy agreement*
- ❑ *A copy of the Notice of Rent Increase, if requesting an order setting aside the notice*
- ❑ *The filing fee necessary to file the claim, or proof of financial situation if requesting that the fee be waived.*

--- Serving Arbitration ---
Hearing Documents

The Hearing Package

Upon filing the application and paying the fee, applicants will receive an arbitration hearing package for each party to the arbitration. Within 3 days, applicants must give each respondent named on the Application for Arbitration one of these packages, to notify respondents of the nature of the dispute and the date and time of the hearing. If the respondent is a landlord, the applicant may serve the respondent's agent with the package. An agent is a person authorized by another to act for or in their place.

The hearing package should include:

- the entire Application for Arbitration;
- the notice of hearing which gives the date, time and place of the hearing and specifies whether the hearing will be held by conference call or in person
- any evidence submitted to the Residential Tenancy Office at the time of application; and
- the information package provided by the Residential Tenancy Office.

The hearing package must be served (formally delivered in accordance with the law) in the manner outlined in the Legislation. The method of service will be determined by the issue in dispute.

Generally, there are two types of disputes: monetary and non-monetary.

- Monetary disputes deal with money, such as claims for compensation or security deposits.

- Non-monetary disputes deal with applications which do not involve money including: an order for possession, change of locks, repairs or setting aside a Notice to End a Tenancy.

It is very important to use the appropriate method of service permitted for each type of dispute. If an arbitrator determines that the applicant failed to follow the proper service provisions and the respondent does not appear, the arbitrator may postpone the hearing or dismiss the applicant's application for arbitration.

It is equally important for the applicant to be able to prove successful delivery of the hearing package. The person who served the package must be prepared to describe under oath or solemnly affirm:

- how the package was served
- who was served,
- where and on what date it was served.

The arbitrator may ask for an Affidavit of Service - a formal legal document swearing that the applicant delivered the package in the proper manner - or may require the person to swear an oath or give a solemn affirmation. If another person served the hearing package, that person should either attend the hearing or submit sworn evidence of service.

Example: Jennifer, a tenant, has filed an application seeking an order for repairs against her landlord. On the day of the hearing Jennifer appears but her landlord does not. Jennifer must provide sworn proof of service of the arbitration documents on her landlord. The arbitration documents

were served by her friend Jill, who is at work and cannot attend the hearing. Jennifer has brought an affidavit of service sworn under oath before a lawyer or notary public by her friend Jill, that says the documents were served and provides the details of service.

Preferred methods of service

Type of dispute	# of days to serve	Allowable methods of service			
		Personal Service	Registered Mail	Regular Mail	Agent if respondent landlord
Monetary	3	Y	Y	N	Y
Non-monetary	3	Y	Y	N	Y
Order of Possession	3	Y	Y	N	Y

In any dispute, whether a rent increase, monetary or non-monetary, the best way to persuade an arbitrator that the respondent has been served is personal service. It may be helpful to bring a witness who will be able to provide supportive evidence of service.

Mailing is more difficult to prove. The Legislation says that regular or registered mail is assumed to be received within 5 clear days after documents are mailed (unless evidence is provided to the contrary). Regular mail is exceptionally difficult to prove because the applicant is not present at the time of delivery and the applicant does not have a receipt of delivery. Regular mail is not acceptable service for an Application for Arbitration. Although service by registered mail is easier to prove, the use of mail may not be appropriate where the hearing is to be held seven days after the application is filed, or shortly thereafter.

The 3-day time limit for serving the application package can be extended by the arbitrator. Note that, in the case of service by registered mail upon a tenant, the legislation requires that the documents be sent to the address where the tenant resides.

Example: *John, a tenant, has filed an application for the return of a security deposit, a monetary claim, against his former landlord. John is anxious to notify his landlord of the hearing and so sends the arbitration documents by courier to the landlord. At the hearing, the landlord does not appear, and John presents to the arbitrator the receipt of payment from the courier but has nothing else. John's application will be rescheduled or dismissed because John has not proven service, as required by the Legislation, namely service by hand or by registered mail. (An Affidavit provided by the courier that the landlord had been personally served would provide acceptable evidence of service, unless there is strong evidence to the contrary.)*

Respondent absent or avoids service of application for order of possession.

On an application for an order of possession or an early end to tenancy, if the respondent is repeatedly absent from the premises where he or she resides or is avoiding service, then the applicant may serve the respondent by alternate means by:

- posting the documents in a conspicuous place where the respondent resides (i.e. on the door), or

- leaving the documents with an adult who apparently resides with the respondent

within three days of the date the application was filed as stamped on the application for arbitration contained in the hearing package.

Note that applicants cannot serve the documents by leaving them in a mail box, sliding them under a door, leaving them inside the premises, posting them to a perimeter gate, or leaving them with a child.

Example: Jasbir, a tenant, has filed an application to set aside a notice to end the tenancy served by his landlord -- a non-monetary claim. Jasbir tries to serve the arbitration documents on the landlord by hand but, after several attempts, is unsuccessful. Jasbir may use the methods of alternate service for non-monetary claims provided by the Legislation.

Respondent avoids service of claims

If the applicant exhausts all methods of service for hearings or alternative methods of serving documents are not available, the applicant can ask the arbitrator to grant an order for another method of service. This is called an order for substituted service. Arbitrators will consider the request for a different method of service at the arbitration hearing or, in exceptional circumstances, in advance of the hearing. There is an additional fee to obtain an arbitrator's order for substituted service in advance of the hearing.

Be prepared to provide sworn evidence regarding attempts made to serve the documents and how the proposed alternate method of service will result in the documents coming to the attention

of the respondent. The order for substituted service must be made in advance of the method of service allowed by the order. An order for substituted service cannot be made after the substituted method of service has occurred. In these circumstances, the 3 days allowed for service may well have expired. If applicable, the applicant should amend the application to request additional time to serve the documents, as provided by the applicable Act.

If a respondent submits evidence, provides a written submission, requests an adjournment, requests to attend by telephone, or attends the hearing, the arbitrator may decide that service of the application and notice of hearing has occurred.

Example: Fiona, a landlord, files a monetary claim for unpaid rent against her former tenant. She sends the arbitration documents to her tenant at the new residential address but the envelope containing the arbitration documents is returned as unclaimed. Fiona makes several attempts to hand the documents to the tenant, even though the three days has gone by, but is unsuccessful as the tenant, according to the relatives who live there, is seldom at home. At the hearing, Fiona asks the arbitrator for an order extending the time to serve and allowing for substituted service permitting her to leave the arbitration documents with an adult person at the tenant's residence. Fiona is able to show that she has made reasonable attempts to serve the tenant and that there is a reasonable likelihood that the documents will come to the tenant's attention.

Service of the arbitration documents

The steps to be taken with respect to service of the arbitration documents can be summarized graphically as follows:

Receive arbitration documents from Residential Tenancy Office

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Attempt to serve arbitration documents by hand or registered mail

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If several attempts unsuccessful, in case of non-monetary claims, use alternate methods of service

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If several attempts unsuccessful in case of monetary claims, or alternate methods not successful for non-monetary claims, request an order for substituted service from the arbitrator, and, if applicable, an extension of time to serve, provided there is a method where it is reasonably likely the documents will come to the respondent's attention

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Attend hearing ready to provide proof of service

Other documents

Service of documents other than the hearing package, such as orders and evidence, follow similar procedures depending upon whether they are a monetary, non-monetary or rent increase documents.

If a party fails to serve other documents as required, such as documentary evidence, the arbitrator may decide not to consider the documents at the hearing, or may order an adjournment to provide time to review the documents.

Both parties must have an opportunity to view any documents presented at the arbitration hearing. At least 3 days prior to the hearing, parties must serve each other and provide the arbitrator with copies of any evidence not filed with the application. The arbitrator may waive this rule at the arbitration hearing. Wherever possible, parties to a hearing must bring original receipts to the hearing.

--- Arbitration Hearing Letter ---

Arbitration hearings are scheduled by the Residential Tenancy Office for a specified date and time. The waiting period depends on the kind of dispute involved. The arbitration hearing letter will name the applicant and the respondent, confirm the date, time and location of the hearing, and state whether the hearing will be face-to-face or over the telephone by conference call.

If a hearing is by conference call, each party is responsible to ensure that the telephone number listed on the hearing letter is correct. Parties who wish to change this number must contact the Residential Tenancy office named on the hearing letter at least 2 days in advance of the hearing. Be prepared to give the six-digit file number found on the hearing letter.

Usually, the arbitration hearing ends within an hour of the scheduled start time, unless the arbitrator determines that it is necessary to adjourn the hearing and to reconvene at a later time or date to hear further evidence.

Example: Bill, a tenant, receives an application for arbitration with a hearing letter indicating that the hearing will be conducted by conference call. The hearing letter has Bill's home telephone number but Bill will be at work at the time of the hearing. Bill calls the Residential Tenancy Office at the number on the hearing letter, at least 48 hours prior to the hearing to provide them with Bill's new number to participate in the conference call hearing.

--- Replying to an Application ---

A respondent served with an application for arbitration may do any one or more of the following:

- contact the applicant directly to determine whether it is possible to settle the dispute informally without going to arbitration;
- ask an Information Officer at the Residential Tenancy Office to explain any other remedies available under the Legislation;
- proceed to arbitration at the scheduled hearing time and bring documents and witnesses to disprove all or part of the applicant's claims;
- make an opposing claim against the original applicant by filing an application for arbitration and serving it in accordance with **Application for Arbitration** and **Serving Arbitration Hearing Documents** above. Ask the Residential Tenancy Office to schedule the application to be heard by the same arbitrator at the same time as the original application. This may not be possible if there is insufficient time before the scheduled hearing date to serve the other party and get the file to the arbitrator.

To ensure fairness, applicants must be given the opportunity to view any documents the respondent wishes to present at the arbitration hearing. At least 3 days before the hearing, respondents must serve the applicant and provide the arbitrator with copies of all documents used to defend their position. The arbitrator may waive this requirement; however, if the documents are not served as required, the arbitrator may decide not to consider the documents or may order the hearing be adjourned to a later date.

Example: Linh has been served with an application for arbitration which contains several particulars with which she does not agree. Linh may send a letter to the Residential Tenancy Office, quoting the file number and dispute address of the premises, replying to the allegations in the application. Linh must serve a copy of the reply on the applicant at least three days before the hearing.

--- Attendance and --- Rescheduling of Hearings

An applicant or respondent who has been served and does not attend the arbitration hearing at the scheduled time runs the risk that the arbitration hearing will proceed without them and the arbitrator may rule against the absent party.

Where the party not appearing is the applicant, the arbitrator will dismiss the matter with or without leave to re-apply. Where the party not appearing is the respondent, the arbitrator may proceed with the hearing and grant part or all of the application.

If the respondent does not appear at the hearing, the applicant must prove that the application and hearing documents were properly served. If the applicant does not have evidence of service the arbitrator may dismiss the claim with or without leave to re-apply.

Obtaining consent to reschedule an arbitration hearing.

Parties who are unable to attend their arbitration hearing on the scheduled date or time should consult the other party to the hearing. If both parties agree in writing to reschedule the arbitration hearing, then a request for rescheduling may be granted subject to the availability of an arbitrator and an available hearing time. The Residential Tenancy Office must receive the request at least 2 complete days in advance of the hearing in order to provide notice of rescheduling to the arbitrator.

Rescheduling an arbitration hearing with consent within 2 days of the hearing

Where less than 2 days remain before the scheduled arbitration hearing, the granting of an adjournment is at the discretion of the arbitrator. The parties should be prepared to proceed in the event the arbitrator does not order the matter to be rescheduled.

> ***Be Prepared:*** *Unless the Residential Tenancy Office confirms an adjournment, prepare to attend the hearing.*

Adjournment by arbitrator where no mutual consent

If one party requests an adjournment of the arbitration hearing because they are unable to attend and if the opposing party does not consent to the hearing being rescheduled, the hearing will go ahead at the scheduled time and the arbitrator will rule on whether to adjourn the arbitration hearing to a later date. If an adjournment is granted, the arbitrator may impose conditions upon the party obtaining the adjournment.

The request for an adjournment can be made either in writing or at the hearing. Be sure to outline the reasons why an adjournment is requested.

Parties unable to attend the hearing

If a party knows he or she will be late or unable to attend the hearing due to circumstances beyond their control, that party should telephone the Residential Tenancy Office, who will attempt to notify the arbitrator. The party may provide the Office with a telephone number to be reached at the scheduled time of the hearing, but it is up to the arbitrator whether that party will be permitted to participate in the hearing by telephone.

Parties unable to attend the arbitration hearing should have a representative attend on their behalf. Representatives should be prepared to present the absent party's case and evidence. Alternatively, a party unable to attend may provide a written submission to the arbitrator.

> ***Be Prepared:*** *Be ready to address all the evidence as the arbitrator may decide that an adjournment is not appropriate.*

Summary of adjournment procedures

Discover that, for reasons beyond a party's control, that party cannot attend the hearing

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Request the consent of the other party to adjourn the matter to another date and time

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If the other party consents, both parties should contact the Residential Tenancy Office to arrange a new date and time

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If the other party does not consent, arrange for an agent to attend instead, or send a written submission to the arbitrator

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If an agent is unavailable or a written submission on its own is inappropriate, request permission to attend by telephone

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If telephone attendance is not possible, send a written request for an adjournment to the arbitrator. Consider sending a written submission in case the adjournment is refused

Cancellation of hearings

If the parties should resolve the dispute, the applicant may cancel the hearing at any time prior to the hearing. A cancellation of the hearing is irrevocable and the filing fee cannot be refunded. A hearing will not be held. It is not possible to cancel a hearing after the scheduled time for the hearing. Only the applicant may cancel a hearing, not the respondent. The staff at the Residential Tenancy Office may call the applicant back to confirm the cancellation. Note that it is the responsibility of the applicant to notify the respondent that a hearing has been cancelled.

Example: Judy, a landlord, had applied for an order of possession based on the non-payment of rent by her tenant. After the arbitration documents were served, the tenant paid Judy money which, as far as Judy was concerned, eliminated the need for an order of possession. The tenant attempted to cancel the hearing by calling the Residential Tenancy Office but the hearing cannot be cancelled by a respondent. Judy then called the Residential Tenancy Office, having her file number handy, and cancelled the hearing. Judy notified her tenant of the cancellation.

--- Conference Call Hearings ---

The Residential Tenancy Office may set an arbitration hearing for a telephone conference call in the following situations:

- if the parties live in different geographical areas,
- if the parties do not have access to established hearing locations,
- if other circumstances exist that would make it appropriate to do so.

If a party to a conference call hearing has witnesses with them at their location, they may be asked to have the witnesses wait in a different room until called to provide evidence. If a party wishes to have witnesses dialed in at a different number or numbers, parties must provide at least 2 days notice to the Residential Tenancy Office so that adequate arrangements can be made to handle the additional lines.

If a party wishes to be called at a telephone number different from the number on the Notice of Hearing, the Residential Tenancy Office must be advised of the new number as soon as possible, quoting the six digit file number and address of the premises in dispute. It may not be possible to accommodate such requests without at least 2 days notice prior to the hearing.

Be Prepared: *It is critical that parties provide all documentary evidence to the arbitrator and exchange it between themselves at least 3 clear days prior to a telephone conference call hearing. The arbitrator may not consider evidence, on a telephone conference call, that has not been seen by the other party (for example, photographs must be provided to the arbitrator and other party).*

--- Preparing for the Hearing ---

Parties can improve the likelihood of succeeding in their case by being prepared for the hearing. Make a list of the issues which are to be considered at the arbitration and the evidence which will be needed to prove or disprove each point. Check it periodically and add items which come to mind.

Gathering evidence

For each of the points, the parties should gather evidence which will help prove that point to the arbitrator. The evidence must be relevant to the issues in dispute. Relevant evidence is connected to the claims contained in the application and is presented to support the party's position. Examples of relevant evidence include estimates, receipts, pictures and witness statements regarding the matters claimed on the application. Remember that the arbitrator will only accept and consider evidence which relates to the issues arising from the application and it is unlikely the arbitrator will allow evidence to be presented on matters unrelated to the issues listed on the application.

Example: Henry, a tenant, has applied for an order that the landlord repair the hot water taps in the kitchen. Evidence that the landlord is dishonest, or has not returned a security deposit to a prior tenant, is not relevant and the arbitrator will likely refuse to hear such evidence.

Obtain photograph-quality copies of pictures to be submitted to the arbitrator and the other party.

Sufficient extra copies of the pictures will be required. Unclear photocopies of pictures will not demonstrate the evidence you wish to provide, and may not be acceptable.

> ***Be Prepared:*** *bring originals of all documents to the hearing for inspection by the arbitrator. The arbitrator may decide to retain the original documents in the file. The hearing is the only opportunity the parties have to present their case, unless the arbitrator adjourns to a later date.*

The arbitrator is not responsible for conducting an investigation on behalf of the parties, obtaining documentary evidence or contacting witnesses. The arbitrator's function is to hear and explore the evidence gathered and presented by the parties, and to make a decision based on the evidence and the law. If a party fails to secure necessary documents or witnesses, the legislation permits the arbitrator to make a decision on the evidence available and the hearing will not be re-opened.

The tenancy agreement

The written tenancy agreement signed by the landlord and tenant should be presented to the arbitrator. Please note that the legislation requires tenancy agreements created after July 1, 1996, to be in writing.

If the agreement to rent the residential premises is an oral one, each party should write down in point-form what they understand the verbal agreement to be. Witnesses to the oral agreement may attend the arbitration hearing and give testimony to the arbitrator.

Daycare

It is not appropriate to bring children to a hearing. It is a good idea to arrange for daycare in advance. In an emergency, an arbitrator may permit the child to attend the hearing; however, it will not be possible to proceed if the child interrupts the hearing.

Witnesses

Notify any witnesses of the date, time and location of the hearing. A party is not required to present evidence from witnesses, but witnesses help strengthen the evidence presented. If witnesses are to be presented, it helps to interview the witnesses in advance to determine what they will say. Make a list of the points for each witness to cover and have that list when they give evidence at the hearing. Inform the witnesses that they will be excluded from the hearing room until it is their turn to present evidence. If a witness cannot attend the hearing, have the witness prepare a letter which sets out what the witness would say at the hearing. The letter may be more effective if it is sworn under oath before a lawyer or notary public in the form of an affidavit or statutory declaration.

Note that it is unusual for an arbitrator to accept evidence over the telephone from a witness during a hearing conducted in person and the arbitrator may refuse to accept the evidence of a witness over the telephone. However, in the case of a conference call the evidence of a witness may be presented over the telephone.

If a potential witness is unwilling to appear at the hearing, a party may request a Summons to Testify be issued by an arbitrator. The request must be in writing and include the name, address

and occupation of the potential witness. The request must state what evidence is required from the witness and why a Summons to Testify is necessary. The request must also state that the witness was requested to appear and has refused. A Summons to Testify will likely not be issued for another party to the application. The issuance of the Summons is at the discretion of the arbitrator, who may conclude that a Summons or the witness is unnecessary. The arbitrator may wait until the hearing to hear evidence why a summons should be issued. If granted the arbitrator will allow that evidence to be presented at a later time.

Example: Frank, a former tenant, is seeking an order for the return of a security deposit paid to Steven, his former landlord. Frank requests a Summons to Testify for Ron, who claims that Steven assaulted him one year ago. The evidence from Ron is not relevant to the monetary claim and the request for a Summons to Testify will not be granted.

Documents

Copies of the documents must be served as described in **Other Documents**. Arrange the documents in the order they will be presented. Be sure to have sufficient extra copies of all documents, one for the other party and one for yourself, in case the arbitrator requires the originals.

Be sure to have two copies of all pictures intended to be submitted to the arbitrator. The copies must be photograph-quality and unclear photocopies will not be acceptable.

A party may request that a Summons for documents be issued by an arbitrator. The

request must be in writing and include the name, address and occupation of the person who is to provide the documents, and describe the documents. The request must state what evidence is required from the documents and why a Summons is necessary. The request must also state that the person in possession of the documents has been asked to provide them and has refused.

Business records

If there is a dispute as to whether the rent was paid the arbitrator may ask to see business records, ledgers and bank statements addressing the issue. Arrange to bring those records in advance. On hearing an Application for Additional Rent Increase, the arbitrator may require the landlord's records supporting a request based on financial loss, or significant and unforeseen repair or renovation.

Video and audio tape

If video or audio tape evidence will be submitted, make a copy as the arbitrator will likely retain the original recording. Send a copy of the documents and audio or video tape to the other party and the arbitrator in advance of the hearing as described in **Other Documents**. If the videotape is other than VHS format, it will be necessary to bring playback equipment to the hearing. In some offices it will be necessary to bring VHS playback equipment as the office may not have video equipment. Verify the availability of playback equipment with the Residential Tenancy Office prior to the hearing.

> ***Be Prepared:*** *The arbitrator will not normally view videotape through the viewfinder of a video camera. All parties must be able to view the evidence.*

In the case of audio tape, the party must bring playback equipment as audio playback equipment is not available at the Residential Tenancy Office. Be sure any video or audio tape is wound to the location you wish to play back. The arbitrator will not wait while a party searches the tape for the section to be played back.

Preparing to ask the other party questions

At the hearing each party will have the right to ask the other party and the opposing witnesses questions, although the party may be required to pose questions through the arbitrator. The purpose of the questions is to obtain admissions and facts which are helpful. The questions must be related to the issues before the arbitrator and if a question is not relevant the arbitrator will disallow it. Similarly, if the question is in reality a statement or argument, the arbitrator will not permit the question. To the extent possible, prepare in advance the questions to be asked of the other party or the opposing witnesses.

Representation by a lawyer or agent – arranging for an interpreter

While the arbitration system is designed so that, in most cases legal representation is not necessary, a party is entitled to be represented by a lawyer. Those arrangements must be made in advance. The parties are responsible for paying the fees if such a person is hired.

Either party to an arbitration is entitled to be represented by an agent. An agent might be a member of the staff of a corporate landlord, or a friend of a landlord or tenant who is unable to make it to a hearing. It should be noted that the Legal Profession Act says that non-lawyers cannot appear in a legal capacity for a fee, to be aware that individuals who provide arbitration support on a

fee for service basis may be operating outside that legislation.

Arrange for an interpreter if one is required. The local Residential Tenancy Office may be able to provide information in arranging for an interpreter. Make those arrangements as far in advance as possible as the arbitrator may refuse a request for an adjournment due to the unavailability of a lawyer, agent or interpreter.

Location of the hearing

If unsure as to the location where the hearing will be held, be sure to have explicit directions to the hearing location. It may be worth a trip prior to the hearing to be satisfied as to the proper location.

Time allotted for the hearing

Prepare the evidence so that the hearing will complete within the time allotted for the hearing, usually one hour. If the allotted time is exceeded, the arbitrator may adjourn the hearing and reconvene at a future date and time. The parties must attend at that date and time with any witnesses they wish to present, or statements from those witnesses who cannot attend. The arbitrator may refuse to reconvene the hearing if the allotted time is exceeded because evidence is not presented in an orderly manner.

Outline

It may assist with the presentation of the evidence to prepare an outline of the points to be made and the evidence to be presented. It may also be useful to clarify the sequence of events by preparing a chronology, or list of events according to the time they occurred. The outline which is prepared could include the following items:

- a description of the dispute;
- a chronology of the events;
- a list of the oral evidence to be presented by the party;
- the evidence which will be presented to support the party's position;
- a list of the witnesses to be presented;
- list of the written witness statements to be presented;
- a list of the documents to be submitted to the arbitrator; and,
- a summary or a submission to be made after the evidence has been presented (if written, a copy must also be provided to the other party).

Checklist

A checklist is useful to ensure the evidence is prepared according to the manner to be presented at the hearing. As each item is prepared, check off that item on the checklist. A possible checklist for preparing for the hearing could be the following:

- ❑ *Arrange witnesses*
- ❑ *Obtain written witness statements*
- ❑ *Request any needed Summons to Testify*
- ❑ *Organize relevant business records*
- ❑ *Make copies of all documents*
- ❑ *Make copies of all pictures*
- ❑ *Make copies of all video or audio tapes*
- ❑ *Arrange all receipts, invoices or estimates in the order to be presented*
- ❑ *Arrange for video or audio playback equipment through the Residential Tenancy Office or private source*
- ❑ *Prepare relevant questions to ask the other party and witnesses*
- ❑ *Be sure of the location of the hearing*
- ❑ *Prepare an outline to be used during the hearing*
- ❑ *Prepare a chronology, or list of the sequence of events*
- ❑ *Arrange daycare*
- ❑ *Arrange for a lawyer, agent or interpreter if desired*

It may be helpful to review the checklist with the witnesses or another helpful person who may point out something important to your particular case which is missing.

--- At the Hearing ---

The purpose of the arbitration hearing is to enable the arbitrator to hear the applicant and respondent explain their versions of the dispute and to receive relevant evidence presented by each party. This evidence will form the basis for the arbitrator's decision.

Arrival

Arrive at least a few minutes prior to the time set for hearing and check in with the receptionist who will let the arbitrator know the parties have arrived. Hearings usually start at the scheduled time. If a party has not yet arrived the arbitrator may wait a few minutes in case they are delayed. It is also possible that the arbitrator has been delayed by a prior hearing, but do not expect that the hearing will begin late. It is most important that each party arrive prior to the time set for hearing. If a party is unexpectedly delayed en route, that party should call the office where the hearing will be held and let them know of the problem and when they expect to arrive. The telephone number is on the hearing letter. The arbitrator may wait a few extra minutes but this is up to the arbitrator. It is the responsibility of the parties to arrive on time for the hearing.

Do not leave the waiting area after checking in with the receptionist. The arbitrator will call the parties to the hearing room by announcing the address of the premises in dispute or by the parties' names. The arbitrator will not go looking for parties.

Avoid bringing children to the hearing *(see Daycare)*.

Commencing the hearing

The arbitrator will direct the parties to the hearing room where they will be seated at the table in the room opposite each other, or at separate tables facing the arbitrator. The arbitrator will sit at the head of the table or at a separate table facing the parties. Some nervousness is normal, but try to relax. The arbitrator will identify the parties in attendance and, if any witnesses have come in to the hearing room, will likely direct them out of the room until called to present evidence. The arbitrator will identify herself or himself and briefly explain how the hearing will proceed. Arbitrators may also lay ground rules, emphasize the necessity for courteous behaviour and caution the parties not to interrupt each other.

The arbitrator will usually ask the applicant to present evidence first. In certain cases, where a tenant is the applicant and is seeking an order to set aside a Notice to End a Tenancy, the arbitrator may require the respondent landlord to go first to justify why the Notice was issued. However, in most cases the applicant must prove their case first and so the applicant usually goes first.

Evidence under oath

The arbitrator may place the parties and witnesses under oath. A party may either swear an oath or may make a solemn affirmation that what will be said will be the truth. The arbitrator may decide that an oath is not required.

Presentation of evidence

Follow the outline which has been prepared as discussed above. In the opening words, inform

the arbitrator that witnesses are present who wish to give evidence. The arbitrator will listen to the evidence of the party first, accept any documentary evidence, and then listen to that party's witnesses. After the evidence of each party or witness has been presented the other party may ask questions. The arbitrator may direct that questions may be asked after all evidence is submitted by all parties.

Present the evidence concisely but thoroughly. Do not repeat statements already made as the arbitrator may end the presentation of evidence at the point the evidence starts to be repeated. Also be sure to make all of the points in the initial presentation of the evidence as a party may not be permitted another opportunity to present new evidence later. **Remember it is an offence to give false or misleading information at an arbitration proceeding.**

Example: At the hearing, Samuel has presented his evidence first and his witnesses have also presented their evidence and been asked questions by the other party. After the other party has presented evidence and witnesses, Samuel, who did not prepare an outline, realizes he forgot to make a point and submit a document which supports that point. Samuel may not be permitted to present the new evidence during his reply to the evidence of the other party.

When the evidence of a party's witnesses is to be presented, they will be brought one at a time into the hearing room. Have a list of the points the witnesses are to make. After each witness has presented evidence the other party may ask questions, if permitted by the arbitrator.

After the first party has presented all their evidence and witnesses, the other party will be asked to present evidence and witnesses.

Reply

The Rules provide each party with an opportunity to reply to the other party's evidence. As the second party's opportunity to reply occurs immediately following the first party's presentation of evidence, and immediately preceding the second party's presentation of their own evidence, it may appear that the second party only receives one opportunity to speak. That party should be aware that their response to any of the first party's evidence should be made immediately preceding or during the presentation of their own evidence as they will not normally be granted the opportunity to reply later.

After the second party has submitted evidence, the first party may be granted an opportunity to reply to what the second party has said. It is unlikely the arbitrator will permit new evidence to be presented during this reply.

If all of the evidence is not presented because the arbitrator runs out of time it may be necessary to reconvene the hearing on another day. Any witnesses not heard must return on the reconvened date, although letters or sworn evidence from them may be submitted if the witnesses are not available.

Submissions

At the conclusion of the evidence the arbitrator may ask each party if they wish to make a submission. This is not an opportunity to restate evidence that has already been provided. It is a time that can be used to clarify relevant points that may not have come out clearly through the presentation of evidence. This can be done by

referring to a point of evidence, a legal case or authority, or by emphasizing important points for the arbitrator's consideration. The arbitrator may limit the submission either to a set time or to certain items only. Be prepared for questions which the arbitrator may ask. If the arbitrator has heard sufficient evidence to find in favour of a party, a submission may not be necessary.

Example: Deborah, a landlord, has filed an application for a monetary order for unpaid rent. The tenant Jack, in response, says that Debbie failed to repair the broken window. Repairs are not usually relevant to a claim for rent and the arbitrator would not need to hear submissions from the parties. If Jack has an issue about a broken window that Deborah has failed to repair, he should file a separate repair application.

Flowchart of the hearing

The conduct of the hearing can follow a logical sequence:

Arrival and Seating in the Hearing Room

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Appearances and Introduction by the Arbitrator

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Party having onus to prove claim goes first (usually the Applicant)

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First party presents evidence, including all relevant documents and pictures

↓

First party presents witnesses (if any)

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First party and witnesses may be asked questions

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Second party presents evidence, including all relevant documents and pictures

↓

Second party presents witnesses (if any)

↓

Second party and witnesses may be asked questions

↓

First party may reply to the second party's evidence

↓

Questions, if left to the end by the Arbitrator

↓

Submissions, if required by the Arbitrator to reach a decision

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Arbitrator's decision

Inspections

The arbitrator has the authority to conduct an on-site inspection if the arbitrator feels it is appropriate and necessary.

Related Matters

The arbitrator has the authority to hear a related matter that is not included on the Application for Arbitration. This power is seldom used by arbitrators. If asked to hear a related matter, the arbitrator will consider whether the matter is related and whether it is appropriate that the matters be heard together. If the arbitrator determines that it is appropriate, the other party will have an opportunity to ask that the hearing be adjourned and present their reasons for the request. The arbitrator will consider those reasons in deciding whether to grant the adjournment.

Affected Third Parties

A landlord can ask an arbitrator to add an overholding tenant as a party to an application for an order of possession of a rental unit that the incoming tenant may have filed against the landlord, but only if the landlord has not accepted rent or money for use and occupation of the premises. If the arbitrator grants the request, the arbitrator will consider a request for an adjournment, and may instruct the landlord how to serve a copy of the arbitration application, notice of a reconvened hearing, and delivery of particulars of the respondents claims against the third party and any relevant evidence. If added, the third party will have an opportunity to speak and present relevant evidence.

In addition to the above provision, a more general provision in the legislation says that, if an

arbitrator becomes aware that another tenant may be materially affected by the decision on an arbitration, even though that tenant is not a party to the arbitration, the arbitrator can require that the other tenant be provided with notice of the hearing, a copy of the application, and a copy of all relevant evidence. Such a tenant will be given an opportunity to be heard, in a manner and at a time determined by the arbitrator. The hearing may be adjourned for this purpose.

Behaviour

It is very important that the parties maintain courteous conduct and composure throughout the hearing. Each party will be given an opportunity to speak, and an opportunity to reply to the other party's evidence. A party should not interrupt another party's presentation of evidence.

An emotional outburst or expression of anger may well damage credibility. Yelling, threats, interruptions and physical reactions to the other party's evidence will not be tolerated by the arbitrator and may result in expulsion from the hearing room or a final decision against that party. Remember that the arbitrator has the power to decide how the hearing will be conducted.

Example: Jim, an applicant, becomes angry during the evidence of the respondent and interrupts the respondent several times. Despite warnings from the arbitrator, and being given an opportunity to compose himself, Jim persists in his rude and interruptive behaviour. As Jim had not supplied his evidence, the arbitrator dismisses Jim's application and refuses permission for Jim to re-apply.

Observers

The presence of persons who are not a party is at the discretion of the arbitrator. The arbitrator will usually ask the permission of the parties before permitting an observer to attend.

Recording of hearings

Private recording of the hearing by any means is not permitted. The arbitrator may permit an official court reporter to transcribe the hearing provided a copy of the transcript is provided to the Residential Tenancy Office and to the other party. The cost of the official court reporter is paid by the party arranging the transcription. Advance notice to the Residential Tenancy Office and the permission of the arbitrator for attendance of an official court reporter is required. Unauthorized recording of a hearing will result in appropriate action by the arbitrator.

Security risk

The Residential Tenancy Office would appreciate advance warning if a party to a hearing presents a potential security risk.

--- The Arbitrator's Decision ---

At the end of the hearing the arbitrator may deliver a decision orally, or may reserve the decision to review and consider the evidence. In any event the arbitrator must deliver a written decision with the reasons why the arbitrator made the decision. If the reasons are straightforward the decision may be brief. The arbitrator has thirty days to send the written decision.

Should the arbitrator deliver the decision orally at the end of the hearing, it is most important that a party not argue with the arbitrator about the decision. An arbitrator is not able to alter a decision once it has been delivered, with only a few exceptions.

The arbitrator will leave the hearing room after a decision has been orally delivered, or after saying that the decision is reserved.

In cases where the decision is straightforward or in case of urgency the arbitrator may direct the parties to wait in the waiting area while the arbitrator prepares the decision and any related orders. Alternatively, the arbitrator may mail the decision and orders, or tell the parties when their documents will be available to be picked up from the Residential Tenancy Office.

If the arbitrator has reserved the decision, the arbitrator's decision will likely arrive by mail to the address on the application. If the decision should be sent to another address be sure to advise the arbitrator at the end of the hearing.

--- After the Hearing ---

After the hearing has ended the parties must leave the hearing room. Any person is welcome to request any additional information from an Information Officer while at the Residential Tenancy Office. However, the Information Officer has no control over or input into the decision process of the arbitrator, who is an independent decision maker. The Information Officer will be unable to answer specific questions about the hearing just completed, including the probable result.

Evidence

Unless the arbitrator has specifically requested that evidence be sent to the arbitrator after the hearing, the arbitrator cannot consider evidence submitted after the hearing is over. The arbitrator will base the decision on the evidence submitted at the hearing. This is why it is so important to be sure the parties bring all the relevant evidence to the hearing. If a letter, invoice, or other item is forgotten, it is unlikely the arbitrator will permit it to be sent in later. If evidence that has not been requested by the arbitrator is sent to the Residential Tenancy Office after the hearing, the arbitrator cannot consider it, and the staff at the Residential Tenancy Office may send it back to that party or place it in the file with a notation that it was received without being requested.

--- After Receiving ---
the Arbitrator's Decision

Enforcement

After receiving the decision each party will either be successful, partially successful, or unsuccessful. If a party is successful or partially successful that party may want to take steps to enforce the arbitrator's decision and order. The arbitrator will provide sufficient copies of signed, original orders to permit service and enforcement in the Courts. If a party was granted a monetary order and did not receive enforcement information with the decision, a party may request a copy of the publication "Enforcing Monetary Orders" from the Residential Tenancy Office. A party may also obtain information about enforcing an arbitrator's monetary order from the Provincial Court nearest the address that is the subject of the dispute. Similarly, if an order of possession was obtained, a party may request a copy of "Enforcing an Order of Possession" if a copy did not accompany the decision.

Be Prepared: it is the responsibility of the parties to enforce most orders.

If a party was unsuccessful, that party may be disappointed with the result. However, remember that the arbitrator bases the decision upon the evidence presented at the hearing. Do not call the Residential Tenancy Office and ask to speak to the arbitrator about the decision as the arbitrator is unable to discuss the decision with either party.

Similarly, an Information Officer is unable to alter the decision or to obtain answers to specific questions arising from the hearing. An Information Officer can provide general information only. It is important to keep emotions in check and remain calm when speaking with Residential Tenancy Office staff, as upset behaviour may make it difficult for staff to provide information.

Correcting an error in a decision or order

The arbitrator is only able to alter a decision or order which has been made in certain specific circumstances. Arbitrators can correct any typographical or arithmetic error which has been made in an order. This is entirely up to the arbitrator and the arbitrator may refuse to make a correction if it will not make any difference to the result. The arbitrator may also clarify any part of the decision which is unclear or any issue which the arbitrator neglected to cover in the decision. This again is entirely up to the arbitrator and clarification will not be made if the intention is to dispute the decision or the decision is already clear. Clarification may only occur within fifteen days of the decision date.

Requests for clarification, or to correct a typographical or arithmetic error, are submitted to the Residential Tenancy Office on the form provided. The request will be forwarded to the arbitrator for consideration.

--- Review of the ---
Arbitrator's Decision

The arbitrator's decision is binding under the legislation. However, a party may in certain circumstances be entitled to a review of the arbitrator's decision. There are two ways the decision of an arbitrator may be reviewed.

Review Under the Act

The *Residential Tenancy Act* permits an arbitrator to reopen a matter in limited circumstances where a party can show that evidence exists that did not come to the arbitrator's attention, and would likely have affected the arbitrator's decision. Those circumstances arise if a party:

- was unable to attend the original hearing due to circumstances that could not be anticipated and that were beyond his or her control,
- has new and relevant evidence that was not available at the time of the original hearing, or
- has evidence that the arbitrator's decision was obtained by fraud.

On receipt of the written decision or order, a party who wants a review must submit an Application for Review of the Decision or Order of an Arbitrator, with the filing fee, within:

- 2 days, where the matter relates to a request for an order of possession, a notice to end tenancy for non-payment of rent, or an order assigning or subletting a tenancy,
- 5 days, on a repair application or an application for repairs or maintenance, services or facilities, or a notice to end tenancy for other than non payment of rent, or
- 15 days, on any other matter.

The application must clearly set out the grounds for review, and be accompanied by sufficient **evidence** to support the grounds on which the application is made. The arbitrator will generally make the initial decision of whether to reopen the matter based solely on the application for review submitted by the applicant and accompanying evidence.

A hearing is not required at this stage of the review process although an arbitrator may call the parties back for a review hearing. If the arbitrator decides that sufficient grounds exist to allow the review, the applicant will be required to serve the other party with a copy of the arbitrator's decision reopening the matter. The other party will have an opportunity to respond to any new evidence before a final decision is made.

Note: Evidence may include affidavits, records, documents, or exhibits. Allegations or an otherwise unsupported application for review will not be sufficient to obtain a review.

Applications for review may be filed at any Residential Tenancy Office, Government Agent's office, or BC Access Centre.

Judicial Review

The next level of review is a judicial review, conducted by a Justice of the Supreme Court under the *Judicial Review Procedure Act*. A party who is considering judicial review may wish to seek the assistance of a lawyer. Judicial review of an arbitrator's decision might be appropriate in some circumstances, such as where the grounds on which the review is being requested do not fit within those set out in the legislation for a review by an arbitrator under the legislation. Note that the Supreme Court may

expect a party to have applied to the Residential Tenancy Office as a first step, if the grounds fall within those set out under the legislation for a review by that agency.

A review by the court is not a new hearing or an appeal, it is a review of the fairness of the arbitrator's decision, although in some cases the court may be concerned that the arbitrator correctly applied the law. However, the court will likely not rehear the evidence again or substitute its own decision for that of the arbitrator. The court is most concerned with the fairness of the process and the hearing, and seldom whether the court agrees with the facts as found by the arbitrator. If the court is concerned with the fairness of the hearing or the proper use of the law by the arbitrator the court may set aside the arbitrator's decision and send it back to the same or a different arbitrator.

If a review of the arbitrator's decision is denied, or if no review is asked for, the arbitrator's decision and orders are enforceable.

--- Getting Your ---
Documents Back

If a party submitted evidence at the hearing the arbitrator likely retained that evidence in the file. If copies of the evidence were brought to the hearing as required, the arbitrator may be willing to return the originals at the hearing and retain copies for the file. However the arbitrator may require that the originals be retained after the hearing – particularly if no copies are provided.

If the arbitrator retained the originals, a party may be able to request the documents back after the arbitrator has delivered the decision and sufficient time has passed to allow for a review. A party may not request the originals or copies of documents of another party unless authorized to do so, and the Residential Tenancy Office will not comply with such a request. The arbitrator may require that originals be kept in the file even after the decision has been made, in which case the party will not be able to obtain the originals, but the party may ask the Residential Tenancy Office to send a certified copy. If there are many documents this request may be denied by the Residential Tenancy Office, so it is most important that the parties bring the required copies of all documents to the hearing.

Video and audio tapes will not normally be returned to the parties and will be kept in the file at the Residential Tenancy Office. Copies of video or audio tape will not be made by the Residential Tenancy Office, except that tapes may be temporarily released to a private firm so that copies may be made at the expense of the requester.

--- Important Information ---

The information presented in this document is for the assistance of parties and other persons interested in the arbitration process under the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*. It is not intended to be a compendium of the legislation or of the relevant case law. Where the information in this document conflicts with the Arbitration Rules of Procedure, the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act*, those documents prevail. The Arbitration Rules of Procedure, the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* are available from the Queen's Printer. Parties are encouraged to contact the Residential Tenancy Office for more information or to seek out a lawyer to obtain legal advice.

--- For More Information ---

For more information, contact or visit the Residential Tenancy Office. To help provide better service to landlords and tenants we have expanded our 24-hour recorded information service. Phone these recorded lines to receive general information and to request any forms or guides:

Lower Mainland	**660-1020**
Elsewhere in BC	**1-800-661-4886**
Enquiry BC	**1-800-663-7867**

If you need to discuss your concerns with an Information Officer, contact the Residential Tenancy Office nearest you. If there is no Residential Tenancy Office in your community, call 1-800-665-8779 or Enquiry BC at 1-800-663-7867 and ask to be connected to the nearest Residential Tenancy Office.

Burnaby
400 - 5021 Kingsway Avenue
Burnaby, BC V5H 4A5
Information line: (604) 660-3456

Administration only: (604) 660-3400
Fax: (604) 660-2363

E-mail: SGRTOBurnaby@gems9.gov.bc.ca

Surrey
10009 - 136A Street
Surrey, BC V3T 4G1
Information line: (604) 660-3456
Administration only: (604) 930-3600
Fax: (604) 930-3615

E-mail: SGRTOSurrey@gems4.gov.bc.ca

Kelowna
201 - 1726 Dolphin Avenue
Kelowna, BC V1Y 9R9
Information line: (250) 717-2000
Administration only: (250) 717-2011
Fax: (250) 717-2021

E-mail: SGRTOKelowna@gems3.gov.bc.ca

Victoria
1st Floor, 1019 Wharf Street
Victoria, BC V8W 9J8
Information line: (250) 387-1602
Administration only: (250) 356-9901
Fax: (250) 356-7296

E-mail: SGRTOVictoria@gems7.gov.bc.ca

Forms and information are also available from your Government Agent office or the BC Access Center.

To access the Residential Tenancy website, visit the B.C. Government website at:

www. gov.bc.ca

and type "RTO" in the search bar.